

Notice of Allowability

Application No.

10/688,489

Examiner

Zachariah Lucas

Applicant(s)

LINNEN, JEFFREY M.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the submission of April 21, 2006.
2. ☒ The allowed claim(s) is/are 8,19,23-26,29 and 30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

1. Claims 18, 19, 23-26, 29, and 30 are pending in the application and allowed.
2. In the prior action, mailed on January 27, 2006, claims 18-26, 29, and 30 were pending; with claims 18-25, 29, and 30 rejected; and claim 26 objected to. In the Response submitted on April 21, 2006, the Applicant amended claims 18 and 23 and cancelled claims 20-22.

Claim Rejections - 35 USC § 112

3. **(Prior Rejection- Withdrawn)** Claims 18-25, 29, and 30 were rejected in the prior action under 35 U.S.C. 112, first paragraph, because the specification, enabling for the claimed kits wherein the first primer consists of an optional first upstream sequence not complementary to the target sequence and a second target-complementary sequence that consists of 22-24 bases of SEQ ID NO: 74, and a second primer that consists of an optional first upstream sequence not complementary to the target sequence and a second target-complementary that consists of 18-22 residues of SEQ ID NO: 59, does not reasonably provide enablement for amplification kits comprising any primer comprising 22 bases from SEQ ID NO: 74, any primer comprising 18 bases of SEQ ID NO: 59. In view of the amendments to the claims, and the arguments made pursuant thereto, the rejection is withdrawn.
4. **(Prior Rejection- Withdrawn)** Claims 18-25, 29, and 30 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In view of the amendments to the claims, and the arguments made pursuant thereto, the rejection is withdrawn.

Allowable Subject Matter

5. The following is an examiner's statement of reasons for allowance: the claims appear allowable over the art in view of the Applicant's disclosure of the unexpected sensitivity of the use of the claimed primer pairs for the detection of West Nile Virus.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

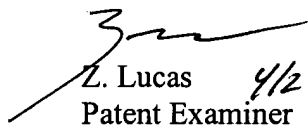
Conclusion


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1648

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


L. Lucas 4/27/06
Patent Examiner


JAMES HOUSEL 4/28/06
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600